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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 193

ELINOR DORRANCE HILL,

Appellant,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

DAVID T. WILENTZ,
Attorney General of New Jersey,
Counsel for Appellees.

DUANE E. MINARD,
Of Counsel.

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UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

In Equity. No. 5092

ELINOR DORRANCE HILL,

Plaintiff,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Defendants.

APPELLEES' STATEMENT IN ANSWER TO APPELLANT'S STATEMENT AS TO JURISDICTION.

Filed June 15, 1935.

(Dorrance Tax Case.)

(a)

The complaint prays:

"That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the

> defendants, * * * from in any way collecting or attempting to collect inheritance tax from the executors of John T. Dorrance on the transfer of intangible personal property in the estate of said decedent, now being undertaken, from refusing to issue tax waivers to said executors covering the intangible personal property of said decedents estate and from refusing to release from escrow the personal property belonging to said decedent's estate now held in escrow subject to the control of the defendants or any of them." (Compl., pp. 19-20.)

The only action authorized by law is the procurement by defendants, or some of them, of a citation directing said executors to appear before the New Jersey Prerogative Court to show cause why the taxes in question should not be paid (N. J. P. L., 1931, Sec. 21, p. 764; summarized at p. 3 of appellant's statement as to jurisdiction.

All questions of fact and law raised in that court (Ans., pp. 49-70), including the exact amount of those taxes, were determined under authority of the statute (N. J. P. L. 1931, Sec. 18, p. 764; N. J. P. L. 1909, Sec. 20, p. 335; summarized at pages 2 and 3 of appellant's statement as to jurisdiction), by the final decree of the Prerogative Court entered May 11, 1934 (Complt., pgf. 42, p. 12; Ans., pgf. 42, pp. 12, 92), upon conclusions of that court filed February 7, 1934 (Ans., p. 71, officially reported in 115 N. J. E. 268) and May 10, 1934 (Ans., p. 87, officially re-reported in 116 N. J. E. 204).

That final decree was reviewed on certiorari, including a complete review of all questions of law and fact (Reasons, Ans., p. 96), and affirmed, by the Supreme Court of New Jersey by final judgment entered February 11, 1935 (Compl., pgf. 43, p. 12; Ans., pgf. 43, pp. 12, 106) upon a decision filed February 8, 1935 (Ans., p. 104, officially reported in 13 N. J. Miscl. Rep. 168).

Each of those courts constitutes part of the judicial department of the State government created and established by Article VI, Section I of the State Constitution, reading in part as follows:

> "The judicial power shall be vested in * * *; a prerogative court; a supreme court; * * *."

The final decree of the Prerogative Court and the final judgment of the Supreme Court are, respectively, judgments of a court of record having competent jurisdiction to review and determine all questions of fact and law in the premises; and are final judgments, respectively, binding and conclusive on the parties, and their privies, unless and until reversed or modified by a higher court, on review prosecuted in the manner provided by law.

If, in response to such citation, said executors fail to show cause why the taxes so determined should not be paid, the Prerogative Court may enter a decree directing judgment for the amount of such taxes, together with interest, to be docketed and filed by the clerk of the Supreme Court, or of any county court, upon which execution may be issued (N. J. P. L. 1931, Sec. 21, p. 764; appellant's statement, p. 3).

Appellees pleaded (and argued before the court on motion for interlocutory injunction) that:

(1) An injunction, if granted in accordance with the prayer of the complaint, would violate Section 265 of the Judicial Code (U. S. C., Title 28, Sec. 379) in that the same would stay a proceeding in a court of the State of New Jersey to collect the taxes in question, pursuant to said final decree in the New Jersey Prerogative Court, and said final judgment of the Supreme Court of the State of New Jersey (Ans., pgf. 74, p. 32).

(2) An interlocutory injunction, if granted in accordance with the prayer of the complaint by a statutory court of three judges, is not authorized by Section 266 of the Judicial Code (U. S. C., Title 28, Sec. 380), because this suit is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statute of such State (Ans., pgf. 75, p. 32).

The Supreme Court of the United States has jurisdiction, under Section 266, to entertain this appeal direct from said statutory court, convened under that section, if the statutory court had jurisdiction.

If, as the appellees contend and the statutory court held, the judgment of the New Jersey Supreme Court was that of a judicial tribunal, and the statutory court lacked jurisdiction to grant an interlocutory injunction because the suit was brought to stay a proceeding in a court of the State of New Jersey, in violation of Section 265, then the suit was not cognizable by the statutory court under Section 266 and this appeal does not lie direct to the Supreme Court of the United States, *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24.

The decree of the statutory court was correct. The same decree would necessarily have resulted if the application for interlocutory injunction had been heard and decided by a single judge, since the District Court, however constituted, was precluded by Section 265 from granting any injunction, either interlocutory or final, in accordance with the prayer of the complaint. The appeal should be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

(b) and (c)

The remainder of appellants Statement (pages 4 to 11, inclusive) deals entirely with the merits of the case and is irrelevant under Rule 12. Appellees deny the statements of law and fact therein contained, but reserve until the proper time the argument thereof.

Motion to Dismiss the Appeal.

Comes now the appellees, by their solicitor, and moves that, for the reasons stated under heading (a) of the foregoing statement on their behalf, this appeal be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

DAVID T. WILENTZ,
Attorney General of New Jersey,
Solicitor for Appellees.

DUANE E. MINARD,
Of Counsel.

June 12, 1935.